

MICHAEL JAY BERGER (State Bar # 100291)
LAW OFFICES OF MICHAEL JAY BERGER
9454 Wilshire Blvd. 6th Floor
Beverly Hills, CA 90212-2929
Telephone: (310) 271-6223
Facsimile: (310) 271-9805
michael.berger@bankruptcypower.com

Proposed Counsel for Debtor and Debtor-in-Possession,
Hawaiian Riverbend, LLC

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re:	)	CASE NO.: 5:22-bk-50314
)	
	)	Chapter 11
HAWAIIAN RIVERBEND, LLC,)	
Debtor and Debtor-in-Possession.	)	REPLY TO KAI FAMILY 1998 TRUST
	)	OBJECTION TO APPLICATION FOR
	)	ORDER AUTHORIZING DEBTOR TO
	)	EMPLOY GENERAL BANKRUPTCY
	)	COUNSEL; DECLARATION OF
	)	MICHAEL JAY BERGER IN
	)	SUPPORT THEREOF
)	
	)	Date: June 7, 2022
	)	Time: 2:00 p.m.
	)	Place: 280 S. First Street
	)	Courtroom 9
	)	(hearing to be held remotely)
	)	San Jose, CA 95113

**TO THE HONORABLE STEPHEN L. JOHNSON, JUDGE OF THE
UNITED STATES BANKRUPTCY COURT, KENNETH Y. KAI AND TAE K.
KAI, TRUSTEES OF THE KAI FAMILY 1988 TRUST, TO THE UNITED
STATES TRUSTEE, TO DEBTOR'S CREDITORS AND TO ALL INTERESTED
PARTIES:**

1
2 Hawaiian Riverbend, LLC (the "Debtor"), Debtor and Debtor-in-Possession
3 herein, respectfully submits its Reply to the Opposition of Kenneth Y. Kai and Tae K.
4 Kai, Trustees of the Kai Family 1998 Trust's ("Kai") to the Application to Employ
5 Michael Jay Berger as Debtor's General Bankruptcy Counsel as follows:
6

7 **I. INTRODUCTION**

8 Applicant asks that Kai's Objection to Applicant's Employment Application be
9 overruled on the basis that Applicant's work on the case was beneficial to the estate of
10 the Debtor, and that there is no actual conflict preventing Applicant from representing
11 both Debtor and its principal Mr. Miroyan.
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13 **II. RESPONSE TO KAI'S OBJECTIONS**

14 **1. Employment of Applicant Benefited the Estate**

15 On April 13, 2022, Debtor retained the Law Offices of Michael Jay Berger
16 ("Applicant") to represent Debtor in its Chapter 11 bankruptcy proceeding.
17

18 On April 14, 2022, a voluntary chapter 11 petition was filed on behalf of the
19 Debtor. Post-petition services commenced on April 15, 2022.
20

21 On April 28, 2022, Applicant filed Debtor's Schedules and Statement of Financial
22 Affairs [docket no.: 22].
23

24 On May 10, 2022, Applicant filed the Application to Employ Michael Jay Berger
25 as General Bankruptcy Counsel [docket nos.: 24, 25 and 26].
26

27 On May 10, 2022, Applicant filed the Motion to Withdraw as Attorney [docket
28 no.: 28].

1 During this period, Applicant prepared Debtor's schedules and other petition
2 documents filed with the Court. Applicant appeared at Debtor's initial debtor interview.
3 Applicant spent a significant amount of time preparing Compliance for the United States
4 Trustee. Applicant also spent time reviewing the Order to Show Cause why the case
5 should be dismissed. During this period, Applicant and his employees communicated
6 with the Debtor about the case, the property and other issues related to the Debtor's case.
7 Applicant did work on Debtor's case, and for the period in which he was Debtor's
8 counsel, Applicant should be employed in the case. Applicant is aware he will file a Fee
9 Application for approval of his fees.

12 2. Applicant is Disinterested

13 Under 11 U.S.C. §327(a), the court-appointed professional must be
14 "disinterested," and must not represent or hold any interest adverse to the estate. The term
15 "disinterested" is defined under Code § 101(14) to mean a person who "is not a creditor,
16 an equity security holder, or an insider" and who "does not have an interest materially
17 adverse to the interest of the estate or of any class of creditors or equity security holders,
18 by reason of any direct or indirect relationship to, connection with, or interest in, the
19 debtor, or for any other reason."

20 Applicant's employment application specifically stated that "Applicant also
21 represents Debtor's managing member Michael Miroyan in a personal Chapter 13 case
22 (Case No. 22-bk-50339)." Neither the Debtor, nor Miroyan, have interests materially
23 adverse of each other or their respective estates, and neither are creditors of each other.
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1 Kai does not state any facts indicating that the Debtor or Miroyan are disinterested, but
2 merely state case law which is inapplicable to the circumstances in these cases.

3 In the alternative, if the Court finds that there is a conflict, the Applicant is
4 agreeable to refund the retainer paid for the chapter 13 case to Debtor's principal,
5 Michael Miroyan.
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7 **III. CONCLUSION**

8 WHEREFORE, Debtor prays for an order authorizing them to retain as General
9 Bankruptcy Counsel, the Law Offices of Michael Jay Berger, effective as of April 14,
10 2022.
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13
14 DATED: May 31, 2022

LAW OFFICES OF MICHAEL JAY BERGER

15
16
17 By: 

18 Michael Jay Berger
19 Proposed Counsel for Debtor-in-Possession
20 Hawaiian Riverbend, LLC
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I, Michael Jay Berger, declare and state as follows:

1. I am an Attorney at Law, licensed to practice before all of the courts in the State of California, and in the United States District Court for the Central District of California. I am the sole owner of the Law Offices of Michael Jay Berger ("Applicant").

2. I seek to be employed by Hawaiian Riverbend, LLC, (the “Debtor”), Debtor and Debtor-in-Possession herein, as their General Bankruptcy Counsel.

3. On April 13, 2022, Debtor retained me to represent Debtor in its Chapter 11 bankruptcy proceeding.

4. On April 14, 2022, I filed a voluntary chapter 11 petition was filed on behalf of the Debtor. Post-petition services commenced on April 15, 2022.

5. On April 28, 2022, I filed Debtor's Schedules and Statement of Financial Affairs [docket no.: 22].

6. On May 10, 2022, I filed the Application to Employ Michael Jay Berger as General Bankruptcy Counsel [docket nos.: 24, 25 and 26].

7. On May 10, 2022, I filed the Motion to Withdraw as Attorney [docket no.: 28].

8. During this period, I prepared Debtor's schedules and other petition documents filed with the Court. I appeared at Debtor's initial debtor interview. My office spent a significant amount of time preparing Compliance for the United States Trustee. I also spent time reviewing the Order to Show Cause why the case should be dismissed. During this period, my employees and I communicated with the Debtor about the case, the property and other issues related to the Debtor's case. I did work on Debtor's case, and for the period in which I was Debtor's counsel, I should be employed in the case.

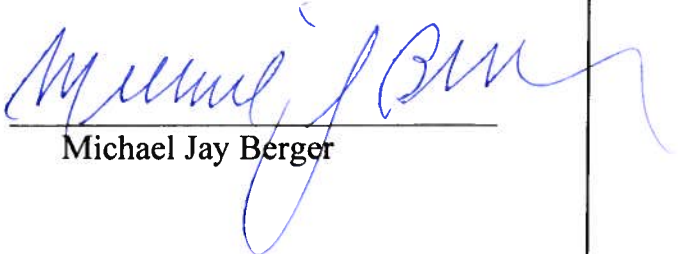
1 9. I am aware of the requirement to file a Fee Application for approval of my
2 fees.

3 10. My employment application specifically stated that "Applicant also
4 represents Debtor's managing member Michael Miroyan in a personal Chapter 13 case
5 (Case No. 22-bk-50339)."

6 11. Neither the Debtor, nor Miroyan, have interests materially adverse of each
7 other or their respective estates, and neither are creditors of each other.
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9 12. In the alternative, if the Court finds that there is a conflict, the Applicant is
10 agreeable to refund the retainer paid for the chapter 13 case to Debtor's principal,
11 Michael Miroyan.
12

13 I declare under penalty of perjury that the foregoing is true and correct and that
14 this declaration is executed on May 31, 2022 at Beverly Hills, California.
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18 _____
19 Michael Jay Berger
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In re: Hawaiian Riverbend, LLC	Debtor(s).	CHAPTER: 11 CASE NUMBER: 22-50314
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
9454 Wilshire Boulevard, 6th floor
Beverly Hills, CA 90

A true and correct copy of the foregoing document entitled (*specify*): **REPLY TO KAI FAMILY 1998 TRUST OBJECTION TO APPLICATION FOR ORDER AUTHORIZING DEBTOR TO EMPLOY GENERAL BANKRUPTCY COUNSEL; DECLARATION OF MICHAEL JAY BERGER IN SUPPORT THEREOF** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 5/31/2022, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:
 Debtor's Proposed Counsel: Michael Jay Berger michael.berger@bankruptcypower.com, michael.berger@ecf.courtdrive.com
 Trustee: Gina R. Klump gklump@klumplaw.net, gina.klump@gmail.com
 Office of the U.S. Trustee / SJ USTPRegion17.SJ.ECF@usdoj.gov
 OUST Counsel: Elvina Rofael elvina.rofael@usdoj.gov, Katina.Umpierre@usdoj.gov, GemMil.Langit@usdoj.gov
 Interested Party: Wayne A. Silver w_silver@sbcglobal.net, ws@waynesilverlaw.com
 OUST Counsel: Marta Villacorta marta.villacorta@usdoj.gov
 Interested Parry: Reno F.R. Fernandez reno.fernandez@calapplaw.com, ecf@macfern.com

☐ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL:**

On 5/31/2022, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtor
Hawaiian Riverbend, LLC
PO Box 3181
Saratoga, CA 95070

Hawaiian Riverbend, LLC
620 Vasona Ave
Los Gatos, CA 95032

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE 5/31/2022**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Honorable Stephen L. Johnson
United States Bankruptcy Court
280 South First Street
San Jose, CA 95113-3099

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

5/31/2022

Yathida Nipha

Date

Printed Name

/s/ Yathida Nipha

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.